EUROPEAN ECONOMY

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ECONOMIC AND FINANCIAL AFFAIRS

Supplement A
Economic trends
No 2 – February 1997

In this number : The legal framework of the EURO

LEGAL FRAMEWORK FOR THE USE OF THE EURO

"As from 1.1.1999 the currency of the participating Member States shall be the euro". This sentence will be one of the core provisions of the monetary law of the Member States which will have adopted the euro at the beginning of the third stage of Economic and Monetary Union. This monetary law of the participating Member States will be laid down in two Council regulations:

– Council regulation [...] on the introduction of the euro and
– Council regulation [...] on certain provisions relating to the introduction of the euro.

The European Commission put forward proposals for these two regulations on 16 October 1996. They were subsequently discussed under the Irish Presidency in a Council working group and politically endorsed by the Ecofin Council in Dublin on 12 December 1996. The European Council in Dublin welcomed this agreement, invited the Irish Presidency to make the two draft regulations public and invited the Council to adopt the regulation based on Article 235 of the Treaty without delay. The European Parliament and the European Monetary Institute gave their opinion on the legal framework on 28 and 29 November 1996 respectively.

The basis for these two regulations had already been laid down in 1995. In May 1995, the Commission had published its Green Paper on the practical arrangements for the introduction of the single currency in which the principal issues relating to the legal framework for the euro had been identified: the definition of the status of the single currency and of the national currency units, the definition of legal tender, the continuity of contracts, rounding rules and provisions for banknotes.

After intensive discussion in 1995 on the euro introduction scenario, the European Council decided on 15/16 December 1995 in Madrid on the reference scenario for the introduction of the euro. Relating to the leagal framework, the European Council agreed that:

"A Council regulation entering into force on 1 January 1999 will provide the legal framework for the use of the Euro. From that date, the Euro will be "a currency in its own right" and the official ECU basket will cease to exist. This Regulation will have the effect that the national currencies and the Euro will become different expressions of what is economically the same currency. As long as different national monetary units still exist, the Council Regulation will establish a legally enforceable equivalence between the Euro and the national currency units ("legally enforceable equivalence" means that each monetary amount is assigned, in a legally enforceable way, an unchangeable countervalue in terms of the Euro unit at the official conversion rate and vice versa). For the period before the deadline set for the completion of the changeover, the Regulation will ensure that private economic agents will be free to use the Euro; at the same time they should not be obliged to do so. As far as possible, they should be allowed to develop their own mechanisms of adjustment to the changeover; however, the implementation of these principles should take into account market practices in terms of standardization. The Regulation will also provide that national banknotes will continue to remain legal tender within the boundaries of the respective national territories until the completion of the changeover to the single currency. The technical preparatory work for this Regulation shall be completed at the latest by the end of 1996."

The Commission proposals put forward in October 1996 were based on this reference scenario. They also profited from substantial input from the European Monetary Institute and from intensive consultations the Commission had organised with representatives of all sectors concerned by the introduction of the euro. Consultations with European banking associations took place in July and September 1996 and a hearing with a broader participation (consumers, employer's organisations, retailers, vending associations) was also organised in September. These consultations showed that for at least some provisions of the legal framework there was an urgent need for legal certainty that called not only for a timely preparation but also for an early formal adoption and entry into force. The banking industry, in particular, argued that the formal adoption of provisions relating to the continuity of contracts, the conversion of the ECU–basket and on rounding rules should take place as soon as possible.

Article 109 l (4) of the Treaty, which allows the adoption of "the other measures necessary for the rapid introduction of the euro", is however only available when participating Member States are known. Therefore the Commission, following an agreement reached at the informal Ecofin meeting in Dublin in September 1996, decided to split up the legal framework and to base those provisions for which legal certainty is most urgently needed on Article 235, while basing the other monetary law provisions on Article 109 l (4).

The regulation to be based on Article 235 of the Treaty will, after its formal adoption in early 1997 enter into force the day after its publication in the Official Journal. It will be binding in its entirety in all Member States.

The regulation based on Article 109 l (4) will, although politically endorsed at the highest level, only be adopted in 1998 once the participating Member States are known. Nevertheless, the political blessing of the European Council and the publication of the text of the draft regulation should provide the legal certainty the markets had asked for, to organise their own preparatory work.

Regulation based on Article 109 l (4) of the Treaty

The main part of the monetary law of participating Member States will be contained in the regulation based on Article 109 l (4), third sentence of the Treaty. This regulation will define the status of the euro as the single currency and it will, for a transitional period, define the legal status of the former national currencies.

According to the draft regulation, the euro will become the currency of the participating Member States as from 1 January 1999 (Article 2). On that date the substitution of the national currencies of the participating Member States by the euro will take place (Article 3). The national currencies will cease to exist in a legal sense as currencies in their own right. Nevertheless, as euro banknotes and coins will not be immediately available, it must be ensured that economic agents can still use the national currency units during a transitional period, running from 1.1.1999 to the end of 2001 (Article 1).

During this transitional period the euro will exist in several denominations. First there will be the euro unit itself, and its decimal sub–division "cent" (Article 2), and second there will be the national currency units, which will be non–decimal sub–divisions of the euro (Article 6 (1)). That means the national currencies of the participating Member States are first substituted by the euro and thereby cease to exist, and second they are reintroduced as sub–divisions of the euro. During the transitional period one therefore has to distinguish carefully between the euro, as the currency of the participating Member States, and the euro unit, as one of the units of the euro.

No–compulsion / no–prohibition

The draft regulation furthermore defines a number of practical rules for the use of the different units, in particular rules which give content to the "no–compulsion / no–prohibition principle" established in Madrid for the use of the euro unit. Although the national currency units and the euro unit are expressions of the same currency, their function and the possibility to use them may differ, depending on the provisions of this regulation, on national legislation or on the terms of a contract.

The draft regulation makes clear that all units – the euro unit as well as the national currency units – can be validly used to set up new legal instruments, like for example contracts or laws. The possibility of using the euro unit follows from the introduction of the euro as the single currency and from the definition of the euro unit as its unit (Article 2). The possibility of using the national currency units follows from the definition as sub–divisions of the euro (Article 6 (1)) and from Article 6 (2) which says that references to national currency units are as valid as references to the euro unit.

This implies notably that parties are free to use the unit they want in contractual relationships. On the other hand it is stipulated in the regulation that acts to be performed under legal instruments, e.g. contracts or laws, have to respect the denomination – either the euro unit or the national currency unit – as provided in this legal instrument (Article 8 (1)). That means, if a contract is set up in BEF, all statements of accounts, invoices etc. have to be made in BEF, unless the parties have agreed on something else (Article 8 (2)). This ensures that in principle only those economic agents have to use the euro unit who have previously agreed to do so by setting up a contract in the euro unit or by modifying an existing one. This is one of the clauses which safeguards the "no–compulsion principle". Contracts and other legal instruments set up before the 1 January 1999 will during the transitional period not change their denomination (Article 7). That means a contract originally set up in BEF will become a euro–contract denominated in the euro sub–unit BEF.

Another safeguard–clause, which is meant to prevent any obligations to use the euro unit, can be found in Article 8 (5) which says that Member States can only impose the use of the euro unit on the basis of Community legislation. This applies not only to contractual relationships, it also applies to all transactions of citizens or enterprises with the public sector and to transactions governed by public law. If a Member State wants on the other hand to enable its citizens to use the euro unit, for example for making tax declarations or for publishing accounts in the euro unit, it is free to do so. The Belgian changeover plan for example offers, from 1 January 1999, the choice of the use of the unit (euro unit or BEF) for enterprises as well as for individual citizens in their transactions with public administrations, including company reporting and tax declarations.

Three exceptions to the principle that the use of the euro–unit cannot be imposed during the transitional period are already foreseen in Articles 8 (3) and 8 (4) of the regulation:

1. Special provisions are foreseen for payments by crediting an account. Amounts denominated in the euro unit or a national currency unit and payable within that Member State can be paid by the debtor either in the euro unit or in that national currency unit, provided of course that the credit institution of the debtor offers the debtor the necessary payment facility. A conversion obligation is established for the receiving credit institution, which has to convert, if necessary, the incoming payment into the denomination of the account of the creditor. The receiving credit institution does not require the authorisation of the account holder to make that conversion. This provision applies not only to credit transfers but also to cheques and to other debit instruments.

Article 8 (3) also applies to certain categories of cross border payments. The term "payable within that Member State" should not be misunderstood to limit this provision to payments where both the account of the debtor and of the creditor are held in the same Member State. It only limits the applicability of this provision to those cases where the account of the creditor is either in the euro unit or in the national currency unit of the Member State where the account of the creditor is held.

2. The second exception relates to the redenomination of debt. Member States may take measures to redenominate outstanding public debt that is denominated in their national currency unit and issued under the contractual law of this Member State. The conditions for the redenomination of other categories of debt, in particular private debt, which would in any case take place at the end of the transitional period, needs to be further specified. The Council has announced that it will define these conditions in the first half of 1997. To prepare the Council decision, a consultation with European banking associations has been organised by the Commission in February 1997.

3. Finally, Member States may take measures to allow organized markets, e.g. stock exchanges, and systems for the regular exchange, clearing and settlement of payments to change their unit of account.

With these provisions, the list of exceptions from the no–compulsion principle is, for the time being, closed. The basis for any further possible exception has, according to Article 8 (5), to be provided for by Community legislation. The national legislator is on the other hand free to maintain provisions during the transitional period which require the use of the national currency unit. This follows from Article 8 (1) which stipulates that acts to be performed under legal instruments, in this case national laws, stipulating the use of a certain unit have to be carried out in that unit. This applies in the first place to transactions with the public sector and those transactions governed by public law. It should nevertheless not be misunderstood as a possibility to impose the national currency unit in contractual relationships, as this would interfere with the principle of "freedom of contract" contained in Article 8 (2). National provisions forbidding the use of the euro unit in this area would thus become inapplicable.

Article 8 (6) serves to confirm that national legal provisions which permit or impose netting, set–off or techniques with similar effects can be applied to monetary obligations, irrespective of their currency denomination (euro unit or national currency unit). This provision is to some extent declaratory as the euro unit and the national currency units are by virtue of Article 2 and 6 units of the same currency. The Commission accepted to confirm the implication of this legal equality with respect to netting at the demand of financial institutions.

Banknotes and coins

Finally the draft regulation contains provisions on the circulation and protection of banknotes and coins. According to Article 10 and 11 the issue of euro notes and coins shall take place at a date to be decided in accordance with the Madrid scenario. The Madrid changeover scenario makes a reference to "1 January 2002 at the latest" as the starting date for the circulation of euro notes and coins. The decision to leave this date open for the time being was taken after indications from the retail sector that the end of the year is not the best time to introduce new banknotes and coins. The actual date will be decided at the latest in early 1998 when this regulation will be formally adopted by the Council. The practical aspects of the introduction of euro notes and coins will be one of the main subjects of the round table organised by the Commission on 15 May 1997.

Participating Member States are by virtue of Article 12 obliged to ensure adequate sanctions against counterfeiting and falsification of banknotes and coins. This formulation has been chosen in close co–operation with the EMI. A review of existing laws in Member States has shown that legal protection against counterfeiting and falsification is relatively homogenous amongst Member States. Most Member States have ratified the Geneva Convention on the protection of banknotes. By this they have committed themselves to a satisfactory degree of protection of banknotes, not only their own banknotes but also those denominated in other currencies. It therefore seemed sufficient, and for reasons of subsidiarity preferable, to formulate only a general obligation for participating Member States.

The final changeover

At the end of the transitional period, the national currency units, as sub–divisions of the euro, cease to exist. They enter into the realm of historical currencies. Afterwards there will only be the euro unit and the cent as its sub–unit. According to Article 14, all remaining references to the national currency units in legal instruments existing at the end of the transitional period have to be read as references to the euro unit, according to the conversion rates. A physical redenomination of these legal instruments is, legally speaking, not necessary. Nevertheless, for reasons of legal certainty and clarity, it might be desirable to physically redenominate certain legal instruments, e.g. long term contracts.

The regulation provides that national notes and coins will lose their legal tender status at the latest six months after the end of the transitional period, i.e. at the latest 30 June 2002. In the meantime they will be legally speaking euro–notes, expressed in the euro unit. Like for other legal instruments, the references to the national currency units on these banknotes will have to be read as references to the euro unit, according to the conversion rates.

As it is possible that some Member States will be willing and technically able to introduce the euro notes and coins more rapidly than others, freedom is given to the Member States to shorten, by national law, this six–month period of dual legal tender, which in several respects may be burdensome for economic agents. They may choose to reduce it to zero. Member States are also free to define rules for this period for the use of national notes and coins and to take any measures which may be necessary to facilitate their withdrawal. With the definite withdrawal of national notes and coins the changeover to the euro is finalised.

The regulation is silent on the question of conversion fees. In fact, in several Member States banking associations have already declared that banks would not charge a fee for conversions between the euro unit and the corresponding national currency unit.

Regulation based on Article 235 of the Treaty

The second regulation, which will be based on Article 235 EC, contains provisions on matters for which financial markets feel most in need of legal certainty. The consultations on this part of the legal framework with market participants were the most intensive. The majority of the comments which the Commission received on the legal framework were on the provisions on continuity and the ECU–euro conversion.

ECU–euro conversion

The draft regulation first confirms the 1:1 conversion between the official ECU–basket and the euro (Article 2). To a large extent, it thereby repeats what is laid down in Article 109 l (4) of the Treaty and what has already been stated by the European Council in Madrid. This confirmation applies in the first place to the official ECU as referred to in Article 109g of the Treaty and as defined in Council Regulation EC No 3320/94 of December 1994. But it also applies to all contracts under private law that make an explicit reference to the ECU as defined in Community legislation.

The draft regulation moreover establishes a presumption that all references to the ECU are to be read as references to the ECU as defined in Community legislation. That means, for example, that clauses making reference to the ECU as used in the EMS or in the Community budget, are, according to this regulation, presumed to be references to the ECU as defined in Community legislation. The reasoning behind this presumption is that it can be safely assumed that practically all parties intended to make reference to the official ECU, even if this was not always properly reflected in the wording of their contracts.

The establishment of the presumption, which is rebuttable, respects the principle of freedom of contract. If parties clearly intended to make a reference to something other than the official ECU, e.g. a permanently fixed basket, then the will of the parties prevails. This follows the approach taken in the Commission Recommendation of April 1994 where it was said that in case of doubt, references in contracts to the ECU should be interpreted as meaning the ECU as defined in Community legislation. The rebutal is not dependent on a written agreement in the contract. It might also be deducted from the conduct of the parties or from other factors. Nevertheless the presumption modifies to some extent the burden of proof for the parties.

Continuity of contracts

Secondly the draft regulation confirms the continuity of contracts and other legal instruments (Article 3). This principle was also already underlined by the European Council in Madrid in the changeover scenario. The Commission introduced it expressly in the legal framework at the demand of market participants, particularly banks, but it is made clear in the recitals that this clause mainly has a declaratory purpose.

It should be noted that the article on continuity refers to the "introduction of the euro", a concept that is broader than the substitution of the euro for the national currencies that takes place on 1.1.1999. The introduction of the euro also comprises the replacement of references to the ECU by references to the euro and it is also open to include other direct effects of the introduction of the euro which might also take place before 1.1.1999. The Commission has, beginning with the Green Paper in 1995, frequently underlined the point that the introduction of the euro does not justify invoking the principle of frustration or principles with similar effects, like "Wegfall der Geschäftsgrundlage", "théorie de l'imprévision", etc.

In all jurisdictions several conditions normally have to be met to allow the invoking of such principles:

– there must be a severe disruption of circumstances underlying the contract, which goes beyond the generally acceptable risk to be carried by one of the parties,

– the event must have been unforeseeable.

For virtually all existing contracts these conditions seem not to be met in the case of EMU. The draft regulation nevertheless provides a clear statement of the principle of continuity; it thereby enhances legal certainty and gives a clear signal to economic agents against challenging existing contracts. This statement should also ensure that parties cannot invoke "force majeure clauses" just because of the introduction of the euro.

The confirmation of the principle of continuity will not only increase legal certainty inside the Union but should also give a positive signal to parties and judges in third countries. Of course, it is not possible for the Community to legislate for third countries; however the application of the principle of lex monetae, which is a universally accepted principle of law, should ensure the continuity of existing contracts denominated in currencies which are substituted by the euro also in third countries' jurisdictions. One should bear in mind that for competitive reasons the main financial centres, like New York or Tokyo, have themselves an interest in their jurisdictions recognising the euro and the continuity of contracts.

The legal framework does not expressly address the issue of the disappearance or replacement of reference rates, like interest rates or securities prices. Examples for such reference rates are the "interbank offered rates" like DM–LIBOR, –FIBOR or –PIBOR. With the substitution of national currencies by the euro, also the corresponding reference rates will be replaced by the euro–LIBOR, –FIBOR or –PIBOR.

The legal framework did not address this issue, because of the diversity of existing reference rates. As they are often defined by private entities, it was not felt to be possible to provide a unique solution for the replacement of these rates.

Nevertheless it can be assumed that also contracts including reference rates will not be discontinued because of the introduction of the euro. The disappearance of reference rates is in fact not a new feature but has happened in the past in particular in the course of the liberalisation of capital markets in the European Union. If parties were not able to agree on the replacement of a reference rate, courts have in general tried to ensure the execution of the contract by taking a new reference rate which is as close as possible to the old one. But the entities, be they public or private, which define a reference rate have also an interest to provide an appropriate substitute and it is to be expected that they announce it in due time.

Rounding/conversion rules

Finally the 235 regulation includes rules on rounding and on the use of the conversion rates. These rules are mainly based on work done by the EMI and by the national central banks. They are of particular importance for the preparation of the changeover of software products to the euro. They are meant to ensure a high degree of accuracy when making conversions and should prevent profit–making through conversion operations.

Though the official conversion rates can only be adopted on 1.1.1999, the draft regulation already defines some aspects now of how the conversion rates will be fixed.

This implies a kind of self commitment by the Council. It is stipulated that only the conversion rates of one euro in terms of each of the participating currencies should be fixed (Article 4 (1)), e.g. 1 euro equals 40 BEF, or 1 euro equals 2 DM. These rates will be adopted by the Council with six significant figures, which should not be rounded or truncated when making conversions. This follows the practice of the definition of central rates in the EMS.

The rates adopted by the Council should be used for conversions either way between the euro and the national currency units (Article 4 (3)) and also for conversions between national currency units (Article 4 (4)). That implies that for converting from a national currency unit to the euro unit one has to divide by the conversion rate. For converting from the euro unit to the national currency unit one has to multiply by the respective conversion rate.

This also implies that no bilateral rates between the national currency units would be defined by the Council, but only a fixed algorithm which explains how to convert from one national currency unit to another. The first step is to convert from the national currency unit into the euro unit where the result has to be calculated by at least three decimal places, and in a second step one converts that euro amount into the other national currency unit. The alternative of defining bilateral rates would have opened the possibility of profit–making through conversion operations from one national currency unit to the other. It is made clear that alternative methods of calculation can be used, provided they produce the same result as the algorithm laid down in the regulation.

COUNCIL REGULATION (EC) No /97 of

on the introduction of the euro

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 109*l*(4), third sentence thereof,

Having regard to the proposal from the Commission[1]

Having regard to the opinion of the European Central Bank[2]

Having regard to the Opinion of the European Parliament[3],

(1) Whereas this Regulation defines monetary law provisions of the Member States which have adopted the euro; whereas provisions on continuity of contracts, the replacement of references to the ECU in legal instruments by references to the euro and rounding have already been laid down in Council Regulation (EC) No /97 of .... on certain provisions relating to the introduction of the euro[4]; whereas the introduction of the euro concerns day–to–day operations of the whole population in participating Member States; whereas measures other than those in this Regulation and in Regulation (EC) No /97 should be examined to ensure a balanced changeover, in particular for consumers;

(2) Whereas, at the meeting of the European Council in Madrid on 15 and 16 December 1995, the decision was taken that the term "ECU" used by the Treaty to refer to the European currency unit is a generic term; whereas the Governments of the fifteen Member States have achieved the common agreement that this decision is the agreed and definitive interpretation of the relevant Treaty provisions; whereas the name given to the European currency shall be the "euro"; whereas the euro as the currency of the participating Member States shall be divided into one hundred sub–units with the name "cent"; whereas the definition of the name "cent" does not prevent the use of variants of this term in common usage in the Member States; whereas the European Council furthermore considered that the name of the single currency must be the same in all the official languages of the European Union, taking into account the existence of different alphabets;

(3) Whereas the Council when acting in accordance with the third sentence of Article 109*l*(4) of the Treaty shall take the measures necessary for the rapid introduction of the euro other than the adoption of the conversion rates;

(4) Whereas whenever under Article 109k(2) of the Treaty a Member State becomes a participating Member State, the Council shall according to Article 109*l*(5) of the Treaty take the other measures necessary for the rapid introduction of the euro as the single currency of this Member State;

(5) Whereas according to the first sentence of Article 109*l*(4) of the Treaty the Council shall at the starting date of the third stage adopt the conversion rates at which the currencies of the participating Member States shall be irrevocably fixed and at which irrevocably fixed rate the euro shall be substituted for these currencies;

(6) Whereas given the absence of exchange rate risk either between the euro unit and the national currency units or between these national currency units, legislative provisions should be interpreted accordingly;

(7) Whereas the term "contract" used for the definition of legal instruments is meant to include all types of contracts, irrespective of the way in which they are concluded;

(8) Whereas in order to prepare a smooth changeover to the euro a transitional period is needed between the substitution of the euro for the currencies of the participating Member States and the introduction of euro banknotes and coins; whereas during this period the national currency units will be defined as sub–divisions of the euro; whereas thereby a legal equivalence is established between the euro unit and the national currency units;

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(1) OJ No C 369, 7.12.1996, p. 10.

(2) Opinion delivered on (not yet published in the Official Journal).

(3) Opinion delivered on (not yet published in the Official Journal).

(4) OJ No

(9) Whereas in accordance with Article 109g of the Treaty and with Regulation (EC) No /97, the euro will replace the ECU as from 1 January 1999 as the unit of account of the institutions of the European Communities; whereas the euro should also be the unit of account of the European Central Bank (ECB) and of the central banks of the participating Member States; whereas, in line with the Madrid conclusions, monetary policy operations will be carried out in the euro unit by the ESCB; whereas this does not prevent national central banks from keeping accounts in their national currency unit during the transitional period, in particular for their staff and for public administrations;

(10) Whereas each participating Member State may allow the full use of the euro unit in its territory during the transitional period;

(11) Whereas during the transitional period contracts, national laws and other legal instruments can be drawn up validly in the euro unit or in the national currency unit; whereas during this period, nothing in this Regulation should affect the validity of any reference to a national currency unit in any legal instrument;

(12) Whereas, unless agreed otherwise, economic agents have to respect the denomination of a legal instrument in the performance of all acts to be carried out under that instrument;

(13) Whereas the euro unit and the national currency units are units of the same currency; whereas it should be ensured that payments inside a participating Member State by crediting an account can be made either in the euro unit or the respective national currency unit; whereas the provisions on payments by crediting an account should also apply to those cross–border payments, which are denominated in the euro unit or the national currency unit of the account of the creditor; whereas it is necessary to ensure the smooth functioning of payment systems by laying down provisions dealing with the crediting of accounts by payment instruments credited through those systems; whereas the provisions on payments by crediting an account should not imply that financial intermediaries are obliged to make available either other payment facilities or products denominated in any particular unit of the euro; whereas the provisions on payments by crediting an account do not prohibit financial intermediaries from coordinating the introduction of payment facilities denominated in the euro unit which rely on a common technical infrastructure during the transitional period;

(14) Whereas in accordance with the conclusions reached by the European Council at its meeting held in Madrid, new tradeable public debt will be issued in the euro unit by the participating Member States as from 1 January 1999; whereas in order to allow, where necessary, the redenomination of outstanding debt in the euro unit and the change of the unit of account of the operating procedures of organized markets, Member States should be able to take appropriate measures;

(15) Whereas further action at the Community level may also be necessary to clarify the effect of the introduction of the euro on the application of existing provisions of Community law, in particular concerning netting, set–off and techniques of similar effect;

(16) Whereas any obligation to use the euro unit can only be imposed on the basis of Community legislation; whereas in transactions with the public sector participating Member States may allow the use of the euro unit; whereas in accordance with the reference scenario decided by the European Council at its meeting held in Madrid, the Community legislation laying down the time frame for the generalization of the use of the euro unit might leave some freedom to individual Member States;

(17) Whereas in accordance with Article 105a of the Treaty the Council may adopt measures to harmonize the denominations and technical specifications of all coins;

(18) Whereas banknotes and coins need adequate protection against counterfeiting;

(19) Whereas banknotes and coins denominated in the national currency units lose their status of legal tender at the latest six months after the end of the transitional period; whereas limitations on payments in notes and coins, established by Member States for public reasons, are not incompatible with the status of legal tender of euro banknotes and coins, provided that other lawful means for the settlement of monetary debts are available;

(20) Whereas as from the end of the transitional period references in legal instruments existing at the end of the transitional period will have to be read as references to the euro according to the respective conversion rates; whereas a physical redenomination of existing legal instruments is therefore not necessary to achieve this result; whereas the rounding rules defined in Regulation (EC) No /97 shall also apply to the conversions to be made at the end of the transitional period or after the transitional period; whereas for reasons of clarity it may be desirable that the physical redenomination will take place as soon as appropriate;

(21) Whereas paragraph 2 of Protocol No 11 on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland stipulates that, inter alia, paragraph 5 of that Protocol shall have effect if the United Kingdom notifies the Council that it does not intend to move to the third stage; whereas the United Kingdom gave notice to the Council on 16 October 1996 that it does not intend to move to the third stage; whereas paragraph 5 stipulates that, inter alia, Article 109*l*(4) of the Treaty shall not apply to the United Kingdom;

(22) Whereas Denmark, referring to paragraph 1 of Protocol No 12 on certain provisions relating to Denmark has notified, in the context of the Edinburgh decision of 12 December 1992, that it will not participate in the third stage; whereas, therefore, in accordance with paragraph 2 of the said Protocol, all Articles and provisions of the Treaty and the Statute of the ESCB referring to a derogation shall be applicable to Denmark;

(23) Whereas, in accordance with Article 109*l*(4) of the Treaty, the single currency will be introduced only in the Member States without a derogation;

(24) Whereas this Regulation, therefore, shall be applicable pursuant to Article 189 of the Treaty, subject to Protocols No 11 and No 12 and Article 109k(1);

HAS ADOPTED THIS REGULATION:

PART I

DEFINITIONS

Article 1

For the purpose of this Regulation:

- "participating Member States" shall mean [Countries A, B ...];
- "legal instruments" shall mean legislative and statutory provisions, acts of administration, judicial decisions, contracts, unilateral legal acts, payment instruments other than bank–notes and coins, and other instruments with legal effect;
- "conversion rate" shall mean the irrevocably fixed conversion rate adopted for the currency of each participating Member State by the Council according to the first sentence of Article 109*l*(4) of the Treaty;
- "euro unit" shall mean the currency unit as referred to in the second sentence of Article 2;
- "national currency units" shall mean the units of the currencies of participating Member States, as those units are defined on the day before the start of the third stage of Economic and Monetary Union;
- "transitional period" shall mean the period beginning on 1 January 1999 and ending on 31 December 2001.

PART II

SUBSTITUTION OF THE EURO FOR THE CURRENCIES OF THE PARTICIPATING MEMBER STATES

Article 2

As from 1 January 1999 the currency of the participating Member States shall be the euro. The currency unit shall be one euro. One euro shall be divided into one hundred cent.

Article 3

The euro shall be substituted for the currency of each participating Member State at the conversion rate.

Article 4

The euro shall be the unit of account of the European Central Bank (ECB) and of the central banks of the participating Member States.

PART III

TRANSITIONAL PROVISIONS

Article 5

Articles 6, 7, 8 and 9 shall apply during the transitional period.

Article 6

1. The euro shall also be divided into the national currency units according to the conversion rates. Any sub–division thereof shall be maintained. Subject to the provisions of this Regulation the monetary law of the participating Member States shall continue to apply.

2. Where in a legal instrument reference is made to a national currency unit, this reference shall be as valid as if reference were made to the euro unit according to the conversion rates.

Article 7

The substitution of the euro for the currency of each participating Member State shall not in itself have the effect of altering the denomination of legal instruments in existence on the date of substitution.

Article 8

1. Acts to be performed under legal instruments stipulating the use of or denominated in a national currency unit shall be performed in that national currency unit. Acts to be performed under legal instruments stipulating the use of or denominated in the euro unit shall be performed in that unit.

2. The provisions of paragraph 1 are subject to anything which parties may have agreed.

3. Notwithstanding the provisions of paragraph 1, any amount denominated either in the euro unit or in the national currency unit of a given participating Member State and payable within that Member State by crediting an account of the creditor, can be paid by the debtor either in the euro unit or in that national currency unit. The amount shall be credited to the account of the creditor in the denomination of his account, with any conversion being effected at the conversion rates.

4. Notwithstanding the provisions of paragraph 1, each participating Member State may take measures which may be necessary in order to:

- redenominate in the euro unit its outstanding debt denominated in its national currency unit and issued under its own national law; this provision shall apply to debt issued by the general government as defined in the European System of Integrated accounts[5];
- enable the change of the unit of account of their operating procedures from a national currency unit to the euro unit by:

  (a) markets for the regular exchange, clearing and settlement of any instrument listed in section B of the Annex to Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field[6] and of commodities; and

  (b) systems for the regular exchange, clearing and settlement of payments.

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(5) Provisions to enable the redenomination in the euro unit of
(a) outstanding debt of the general government denominated in the national currency units of other participating Member States and
(b) bonds and other forms of securitized debt of other issuers which are negotiable in the capital markets are still under consideration and will be included in this Regulation before the Amsterdam European Council.

(6) OJ No L 141, 11.6.1993, p. 27. Directive as amended by Directive 95/26/EC of the European Parliament of the Council (OJ No L 168, 18.7.1995, p. 7).

5. Provisions other than those of paragraph 4 imposing the use of the euro unit may only be adopted by the participating Member States in accordance with any time–frame laid down by Community legislation.

6. National legal provisions of participating Member States which permit or impose netting, set–off or techniques with similar effects shall apply to monetary obligations, irrespective of their currency denomination, if that denomination is in the euro unit or in a national currency unit, with any conversion being effected at the conversion rates.

Article 9

Banknotes and coins denominated in a national currency unit shall retain their status as legal tender within their territorial limits as of the day before the entry into force of this Regulation.

PART IV

EURO BANKNOTES AND COINS

Article 10

[At a date to be decided, in accordance with the Madrid scenario, when this Regulation is adopted][7], the ECB and the central banks of the participating Member States shall put into circulation banknotes denominated in euro. Notwithstanding Article 15, these banknotes denominated in euro shall be the only banknotes which have the status of legal tender in all these Member States.

Article 11

[At a date to be decided, in accordance with the Madrid scenario, when this Regulation is adopted][8] , the participating Member States shall issue coins denominated in euro or in cent and complying with the denominations and technical specifications which the Council may lay down in accordance with the second sentence of Article 105a(2) of the Treaty. Notwithstanding Article 15, these coins shall be the only coins which have the status of legal tender in all these Member States. Except for the issuing authority and for those persons specifically designated by the national legislation of the issuing Member State, no party shall be obliged to accept more than fifty coins in any single payment.

Article 12

Participating Member States shall ensure adequate sanctions against counterfeiting and falsification of euro banknotes and coins.

PART V

FINAL PROVISIONS

Article 13

Articles 14, 15 and 16 shall apply as from the end of the transitional period.

Article 14

Where in legal instruments existing at the end of the transitional period reference is made to the national currency units, these references shall be read as references to the euro unit according to the respective conversion rates. The rounding rules laid down in Regulation (EC) No /97 shall apply.

Article 15

1. Banknotes and coins denominated in a national currency unit as referred to in Article 6(1) shall remain legal tender within their territorial limits until six months after the end of the transitional period at the latest; this period may be shortened by national law.

2. Each participating Member State may, for a period of up to six months after the end of the transitional period, lay down rules for the use of the banknotes and coins denominated in its national currency unit as referred to in Article 6(1) and take any measures necessary to facilitate their withdrawal.

Article 16

In accordance with the laws or practices of participating Member States, the respective issuers of banknotes and coins shall continue to accept, against euro at the conversion rate, the banknotes and coins previously issued by them.

PART VI

ENTRY INTO FORCE

Article 17

This Regulation shall enter into force on 1 January 1999.

This Regulation shall be binding in its entirety and directly applicable in all Member States, in accordance with the Treaty, subject to Protocols No 11 and No 12 and Article 109k(1).

Done at Brussels,

For the Council

The President

COUNCIL REGULATION (EC) No /97 of

on certain provisions relating to the introduction of the euro

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

Having regard to the proposal of the Commission[1],

Having regard to the Opinion of the European Parliament[2] ,

Having regard to the opinion of the European Monetary Institute[3],

(7) To be replaced by precise date at the time of adoption.

(8) To be replaced by precise date at the time of adoption.

(1) OJ No C 369, 7.12.1996, p.8.

(2) Opinion delivered on (not yet published in the Official Journal).

(3) Opinion delivered on (not yet published in the Official Journal).

(1) Whereas, at its meeting held in Madrid on 15 and 16 December 1995, the European Council confirmed that the third stage of Economic and Monetary Union will start on 1 January 1999 as laid down in Article 109j(4) of the Treaty; whereas the Member States which will adopt the euro as the single currency in accordance with Article 109k of the Treaty will be defined for the purposes of this Regulation as the "participating Member States";

(2) Whereas, at the meeting of the European Council in Madrid, the decision was taken that the term "ECU" used by the Treaty to refer to the European currency unit is a generic term; whereas the Governments of the fifteen Member States have achieved the common agreement that this decision is the agreed and definitive interpretation of the relevant Treaty provisions; whereas the name given to the European currency shall be the "euro"; whereas the euro as the currency of the participating Member States will be divided into one hundred sub–units with the name "cent"; whereas the European Council furthermore considered that the name of the single currency must be the same in all the official languages of the European Union, taking into account the existence of different alphabets;

(3) Whereas a Regulation on the introduction of the euro will be adopted by the Council on the basis of the third sentence of Article 109*l*(4) of the Treaty as soon as the participating Member States are known in order to define the legal framework of the euro; whereas the Council, when acting at the starting date of the third stage in accordance with the first sentence of Article 109*l*(4) of the Treaty, shall adopt the irrevocably fixed conversion rates;

(4) Whereas it is necessary, in the course of the operation of the common market and for the changeover to the single currency, to provide legal certainty for citizens and firms in all Member States on certain provisions relating to the introduction of the euro well before the entry into the third stage; whereas this legal certainty at an early stage will allow preparations by citizens and firms to proceed under good conditions;

(5) Whereas the third sentence of Article 109*l*(4) of the Treaty, which allows the Council, acting with the unanimity of participating Member States, to take other measures necessary for the rapid introduction of the single currency is available as a legal basis only when it has been confirmed, in accordance with Article 109j(4) of the Treaty, which Member States fulfil the necessary conditions for the adoption of a single currency; whereas it is therefore necessary to have recourse to Article 235 of the Treaty as a legal basis for those provisions where there is an urgent need for legal certainty; whereas therefore this Regulation and the aforesaid Regulation on the introduction of the euro will together provide the legal framework for the euro, the principles of which legal framework were agreed by the European Council in Madrid; whereas the introduction of the euro concerns day–to–day operations of the whole population in participating Member States; whereas measures other than those in this Regulation and in the Regulation which will be adopted under the third sentence of Article 109*l*(4) of the Treaty should be examined to ensure a balanced changeover, in particular for consumers;

(6) Whereas the ECU as referred to in Article 109g of the Treaty and as defined in Council Regulation (EC) No 3320/94 of 22 December 1994 on the consolidation of the existing Community legislation on the definition of the ECU following the entry into force of the Treaty on European Union[4] will cease to be defined as a basket of component currencies on 1 January 1999 and the euro will become a currency in its own right; whereas the decision of the Council regarding the adoption of the conversion rates shall not in itself modify the external value of the ECU; whereas this means that one ECU in its composition as a basket of component currencies will become one euro; whereas Regulation (EC) No 3320/94 therefore becomes obsolete and should be repealed; whereas for references in legal instruments to the ECU, parties shall be presumed to have agreed to refer to the ECU as referred to in Article 109g of the Treaty and as defined in the aforesaid Regulation; whereas such presumption should be rebuttable taking into account the intentions of the parties;

(7) Whereas it is a generally accepted principle of law that the continuity of contracts and other legal instruments is not affected by the introduction of a new currency; whereas the principle of freedom of contract has to be respected; whereas the principle of continuity should be compatible with anything which parties might have agreed with reference to the introduction of the euro; whereas, in order to reinforce legal certainty and clarity, it is appropriate explicitly to confirm that the principle of continuity of contracts and other legal instruments shall apply between the former national currencies and the euro and between the ECU as referred to in Article 109g of the Treaty and as defined in Regulation (EC) No 3320/94 and the euro; whereas this implies, in particular, that in the case of fixed interest rate instruments the introduction of the euro does not alter the nominal interest rate payable by the debtor; whereas the provisions on continuity can fulfil their objective to provide legal certainty and transparency to economic agents, in particular for consumers, only if they enter into force as soon as possible;

(8) Whereas the introduction of the euro constitutes a change in the monetary law of each participating Member State; whereas the recognition of the monetary law of a State is a universally accepted principle; whereas the explicit confirmation of the principle of continuity should lead to the recognition of continuity of contracts and other legal instruments in the jurisdictions of third countries;

(9) Whereas the term "contract" used for the definition of legal instruments is meant to include all types of contracts, irrespective of the way in which they are concluded;

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(4) OJ No L 350, 31.12.1994, p. 27.

(10) Whereas the Council, when acting in accordance with the first sentence of Article 109*l*(4) of the Treaty, shall define the conversion rates of the euro in terms of each of the national currencies of the participating Member States; whereas these conversion rates should be used for any conversion between the euro and the national currency units or between the national currency units; whereas for any conversion between national currency units, a fixed algorithm should define the result; whereas the use of inverse rates for conversion would imply rounding of rates and could result in significant inaccuracies, notably if large amounts are involved;

(11) Whereas the introduction of the euro requires the rounding of monetary amounts; whereas an early indication of rules for rounding is necessary in the course of the operation of the common market and to allow a timely preparation and a smooth transition to Economic and Monetary Union; whereas these rules do not affect any rounding practice, convention or national provisions providing a higher degree of accuracy for intermediate computations;

(12) Whereas, in order to achieve a high degree of accuracy in conversion operations, the conversion rates should be defined with six significant figures; whereas a rate with six significant figures means a rate which, counted from the left and starting by the first non–zero figure, has six figures,

HAS ADOPTED THIS REGULATION:

Article 1

For the purpose of this Regulation:

- "legal instruments" shall mean legislative and statutory provisions, acts of administration, judicial decisions, contracts, unilateral legal acts, payment instruments other than banknotes and coins, and other instruments with legal effect,
- "participating Member States" shall mean those Member States which adopt the single currency in accordance with the Treaty,
- "conversion rates" shall mean the irrevocably fixed conversion rates which the Council adopts in accordance with the first sentence of Article 109*l*(4) of the Treaty,
- "national currency units" shall mean the units of the currencies of participating Member States, as those units are defined on the day before the start of the third stage of Economic and Monetary Union,
- "euro unit" shall mean the unit of the single currency as defined in the Regulation on the introduction of the euro which will enter into force at the starting date of the third stage of Economic and Monetary Union.

Article 2

1. Every reference in a legal instrument to the ECU, as referred to in Article 109g of the Treaty and as defined in Regulation (EC) No 3320/94, shall be replaced by a reference to the euro at a rate of one euro to one ECU. References in a legal instrument to the ECU without such a definition shall be presumed, such presumption being rebuttable taking into account the intentions of the parties, to be references to the ECU as referred to in Article 109g of the Treaty and as defined in Regulation (EC) No 3320/94.

2. Regulation (EC) No 3320/94 is hereby repealed.

3. This Article shall apply as from 1 January 1999 in accordance with the decision pursuant to Article109j(4) of the Treaty.

Article 3

The introduction of the euro shall not have the effect of altering any term of a legal instrument or of discharging or excusing performance under any legal instrument, nor give a party the right unilaterally to alter or terminate such an instrument. This provision is subject to anything which parties may have agreed.

Article 4

1. The conversion rates shall be adopted as one euro expressed in terms of each of the national currencies of the participating Member States. They shall be adopted with six significant figures.

2. The conversion rates shall not be rounded or truncated when making conversions.

3. The conversion rates shall be used for conversions either way between the euro unit and the national currency units. Inverse rates derived from the conversion rates shall not be used.

4. Monetary amounts to be converted from one national currency unit into another shall first be converted into a monetary amount expressed in the euro unit, which amount may be rounded to not less than three decimals and shall then be converted into the other national currency unit. No alternative method of calculation may be used unless it produces the same results.

Article 5

Monetary amounts to be paid or accounted for when a rounding takes place after a conversion into the euro unit pursuant to Article 4 shall be rounded up or down to the nearest cent. Monetary amounts to be paid or accounted for which are converted into a national currency unit shall be rounded up or down to the nearest sub–unit or in the absence of a sub–unit to the nearest unit, or according to national law or practice to a multiple or fraction of the sub–unit or unit of the national currency unit. If the application of the conversion rate gives a result which is exactly half–way, the sum shall be rounded up.

Article 6

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council

The President

Principal economic policy measures – December 1996 and January 1997

Community (EUR-15)

13/14.12 The European Council welcomes progress in preparation for EMU. In particular, it endorses the conclusions on the new exchange rate mechanism as proposed by the ECOFIN Council and the EMI as well as the agreements reached on the Stability and Growth Pact and on establishing the legal framework for the euro.The European Council also endorses the 1996 Joint Employment Report from the Commission and the ECOFIN Council.

10.1 The EMI presents a report on "The Single Monetary Policy in Stage Three" which specifies the regulatory, organisational and logistical framework necessary for the ESCB to perform its tasks in Stage Three.

22.1 The Commission adopts a Green Paper on vertical restrictions in competition. It analyses the current situation and presents options for the future.

Belgium (B)

18.12 The government caps accumulated wage increases for 1997–98 at 6.1%.

20.12 The government decides on savings in the medical care sector amounting to BEF 10 billion.

20.12 The government approves a new convergence programme for the period 1998–2000. The objective is to reduce the deficit to 1.5% of GDP and the debt ratio by 10 percentage points by the year 2000.

Denmark (DK)

19.12 Following a political understanding and agreement between the government and two left–wing parties, Parliament approves the 1993 Tax Law by a large majority, in line with political tradition in Denmark. The latest forecast by the Danish authorities is for net general government lending equivalent to 0.2% of GDP in 1997.

Germany (D)

19.12 The Bundesbank Council fixes the money supply targets for the next two years. M3 should grow by an average of 5% in 1997 and 1998. Owing to lower expected inflation, the target range for 1997 is set at 3.5%–6.5%, compared with 4%–7% for 1996. The precise target range for 1998 will be decided at a later date.

Greece (EL)

13.12 The Bank of Greece cuts the discount and overdraft rates by 100 basis points to 16.5% and 25% respectively (as from 18.12.96), and the compulsory deposits rate by 150 basis points to 11% (as from 1.1.97).

Spain (E)

13.12 The Bank of Spain cuts its key money rate by 50 basis points to 6.25% at the regular ten–day repurchase tender for central bank certificates.

20.12 The Spanish government reduces both personal income tax and withholding tax rates for 1997 by 2.6 %, in line with the forecast rate of inflation.

27.12 The Spanish government approves an average reduction in electricity prices of 3% for 1997.

27.12 The Spanish government approves a national minimum wage of ESP 66 630 for 1997, representing an increase of 2.6% on the previous year, in line with the forecast rate of inflation.

16.1 The Bank of Spain cuts its key money rate by 25 basis points to 6% at the regular ten–day repurchase tender for central bank certificates.

France (F)

17.12 The Bank of France cuts its money market intervention rate by 5 basis points to 3.15% and its five–to–ten–day lending rate by 15 basis points to 4.60%. The Bank of France also sets objectives for 1997 that are very similar to those adopted for 1996. It plans to contain inflation to no more than 2% next year and over the medium term. The monetary aggregate M3 should rise by 5% and the Bank of France intends to monitor several other aggregates.

3.1 The Cabinet appoints two new members to the Bank of France's monetary policy council. Mr Pierre Guillen and Mr Jean–René Bernard replace Mr Jean Boissonnat and Mr Bruno de Maulde, whose mandates have expired.

15.1 The National Assembly approves the draft law for the creation of private pension funds.

30.1 The Bank of France cuts its money market intervention rate by 5 basis points to 3.10%.

Ireland (IRL)

9.12 The government publishes its public expenditure estimates for 1997 showing an expected increase in current expenditure of about 3.2% in real terms, thus breaching the declared objective of limiting the real increase to 2%.

20.12 A new social consensus agreement between the social partners and the government is negotiated. This follows a series of agreements which have been central to economic policy in Ireland. The agreement, Partnership 2000 for Inclusion, Employment and Competitiveness, includes a wage agreement covering three years and three months and allows for a cumulative nominal rise in basic pay of up to 9.6% over the period of the agreement, depending partly on productivity and restructuring agreements. The agreement also commits the government to reducing personal income tax by IEP 900 million (equivalent to some 0.5% of GDP) while maintaining the real value of social welfare payments.

22.1 The Irish budget for 1997 is announced. The budget figures show a real increase in total spending of 3.2%. In addition, the basic rate of income tax is cut from 27% to 26% and the standard corporation tax rate is cut from 38% to 36%. The budget also announces a reduction in the basic rate of employee social insurance contributions. These changes, along with increases in tax allowances which more than compensate for inflation, result in a reduction in personal taxation amounting to an estimated IEP 393 million (about 0.8% of GDP) on a full year basis. The general government deficit is expected to rise from an estimated 1% of GDP in 1996 to 1.5% of GDP in 1997.

Italy (I)

22.12 The Italian chamber of deputies ratifies on the second and final reading the 1997 Budget Law. The budget, approved by the Senate on 19 December, contains deficit–cutting measures amounting to an estimated ITL 63.4 trillion (3.3% of GDP).

30.12 The Italian government issues a decree law providing for deficit–cutting measures totalling ITL 4.3 trillion. The measures had been included in the Budget for 1997 but had not been itemized.

22.1 The Central Bank reduces its discount rate by 75 basis points to 6.75%.

Luxembourg (L)

None.

Netherlands (NL)

None.

Austria (A)

23.1 The Austrian National Bank offers a 2–week–quantity tender at an interest rate of 3.00%.

Portugal (P)

19.12 The Bank of Portugal cuts its money market intervention rates by 20 basis points. The repo rate is lowered to 6.7%, the overnight standing facility rate to 8.3% and the draining liquidity rate to 6.2%.

9.1 The government approves the Decree–Law setting the national minimum wage and the minimum wage for domestic services at, respectively, PTE 56 700 and PTE 51 450. These amounts correspond to increases of, respectively, 3.8% and 5%.

10.1 The Bank of Portugal cuts its repo rate by 20 basis points to 6.5%.

Finland (SF)

17.1 The Government submits to Parliament a proposal for an Act on the Bank of Finland. The proposal, which would replace the present Act on the Bank of Finland, would clarify the division of responsibilities by assigning the responsibility for monetary policy to the Board of Directors, while the Parliamentary Supervisory Board is given a supervisory and administrative role. The proposed Act states that the primary aim of the central bank is to safeguard the value of the currency.

Sweden (S)

5.12 The Central Bank cuts the deposit and lending rates by 50 basis points to 3.75% and 5.25% respectively.

17.12 The Central Bank cuts the repo rate by 25 basis points to 4.10%.

United Kingdom (UK)

None.

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CM-AS-97-002-EN-C